

(Attorney list on signature page)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re Bank of America Corp. Auction Rate  
Securities Marketing Litigation

MDL No. 09-2014

**AMENDED STIPULATION AND  
[PROPOSED] SCHEDULING  
ORDER**

This Document Relates to:  
*Bondar v. Bank of America Corp.*  
No. C 08-2599 (JSW)

Hon. Jeffrey S. White

**WHEREAS** on September 29, 2009, the hearing on Defendants Bank of America Corporation, Banc of America Securities LLC, and Banc of America Investment Services, Inc.'s (collectively, "Defendants") motion to dismiss the Second Amended Class Action Complaint in *Bondar v. Bank of America Corp.*, No. C 08-2599 (JSW) was moved from November 20, 2009 to December 11, 2009. (Dkt. Nos. 103-104)

**WHEREAS** on October 7, 2009, Class Plaintiffs ("Plaintiffs") and Defendants submitted a stipulation and proposed order to extend the dates for the filing of Plaintiffs' opposition to Defendants' motion to dismiss from October 9 to October 30, and Defendants' reply thereto from October 30 to November 25. (Dkt. No. 105)

**WHEREAS** on October 7, 2009, the Court denied the stipulation, finding that the continuance of the hearing on the motion to dismiss did not provide good cause to modify the briefing schedule. (Dkt. No. 106)

**WHEREAS** counsel for the parties have conferred, and Plaintiffs respectfully submit and Defendants do not oppose the following amended [proposed] scheduling order that provides for a one week extension of the existing briefing schedule for Plaintiffs and one week for Defendants and retains the existing hearing date.

1       **WHEREAS** under the existing schedule, Plaintiffs' opposition to Defendants' motion  
 2 to dismiss is due on October 9, 2009, Defendants' reply is due on October 30, 2009, and the  
 3 motion is scheduled to be heard on December 11, 2009, six weeks after briefing will be  
 4 completed.

5       **WHEREAS** since Defendants' motion to dismiss was filed on September 9, 2009, there  
 6 have been three decisions issued in other auction rate securities matters that are potentially  
 7 relevant to the briefing on the pending motion to dismiss. The three decisions are *In re:*  
 8 *Citigroup Auction Rate Securities Litigation*, 2009 U.S. Dist. LEXIS 83046 (S.D.N.Y. Sept. 11,  
 9 2009); *Defer LP v. Raymond James Financial, Inc., et al.*, 2009 U.S. Dist. LEXIS 84685  
 10 (S.D.N.Y. Sept. 17, 2009); and *Zisholtz v. Suntrust Banks, Inc., et al.*, 2009 U.S. Dist. LEXIS  
 11 88465 (N.D. Ga. Sept. 24, 2009).

12       **WHEREAS** these three recent decisions have required additional research and analysis  
 13 in connection with Plaintiffs' opposition to Defendants' motion to dismiss and are likely to be  
 14 included in the arguments advanced in support of and in opposition to the motion. These  
 15 decisions have also resulted in changes to briefing schedules in other auction rate securities  
 16 matters that Plaintiffs' counsel are involved in. Plaintiffs respectfully submit, and Defendants  
 17 do not oppose, that the requested extension sought here is reasonable given the complexity of  
 18 the issues raised by Defendants' motion, the growing body of case law in auction rate securities  
 19 litigation matters, and the pleading standards applicable to securities claims.

20       **WHEREAS** the extension sought will not result in any prejudice to the parties or delay  
 21 the litigation, and the parties do not anticipate requesting any further extension of the briefing  
 22 schedule or hearing date. If this stipulation is granted, the Court will have four weeks to review  
 23 the parties' briefing on the motion to dismiss before the December 11, 2009 hearing date.

24       In light of the foregoing, Plaintiffs respectfully propose, and Defendants do not oppose,  
 25 the following amended schedule, subject to this Court's approval: Plaintiffs shall file their  
 26 opposition to Defendants' motion to dismiss on October 16, 2009, and Defendants shall file  
 27 their reply in support of the motion to dismiss on November 13, 2009.

1 Dated: October 8, 2009

2 **GIRARD GIBBS LLP**

**O'MELVENY & MYERS LLP**

3  
4 By: /s/ Aaron M. Sheanin  
Daniel C. Girard, dcg@girardgibbs.com  
5 Jonathan K. Levine, jkl@girardgibbs.com  
Aaron M. Sheanin, ams@girardgibbs.com  
6 Christina H. C. Sharp, chc@girardgibbs.com  
601 California Street, Suite 1400  
7 San Francisco, California 94108  
Tel: (415) 981-4800  
8 Fax: (415) 981-4846

9 *Attorneys for Class Plaintiffs*

By: /s/ B. Andrew Bednark  
Jonathan Rosenberg, jrosenberg@omm.com  
B. Andrew Bednark, abednark@omm.com  
7 Times Square  
New York, New York 10036  
Tel: (212) 326-2000  
Fax: (212) 326-2061

Robert Stern, rstern@omm.com  
1625 Eye Street NW  
Washington, DC 20006  
Tel: (202) 383-5300  
Fax: (202) 383-5414

Debra S. Belaga, dbelaga@omm.com  
Aaron M. Rofkahr, arofkahr@omm.com  
Two Embarcadero Center, 28th Floor  
San Francisco, California 94111  
Tel: (415) 984-8700  
Fax: (415) 984-8701

*Attorneys for Defendants*

**PROPOSED ORDER**

Having reviewed the above stipulation, **IT IS HEREBY ORDERED** that the parties have shown good cause for an extension of the existing briefing schedule. Plaintiffs shall file their opposition to Defendants' motion to dismiss by October 16, 2009, and Defendants shall file their reply in support of the motion to dismiss by November 13, 2009.

**IT IS SO ORDERED.**

DATED: October 8, 2009

  
\_\_\_\_\_  
THE HONORABLE JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE